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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 BENJAMIN SCOTT MINER,

11 Plaintiff,

12 v.

13 KEITH BAKER; LIEN
14 ENFORCEMENT, INC.

15 Defendants.

Civil No. 15-cv-2765-JAH (RBB)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS (DOC. # 5)**

16 **INTRODUCTION**

17 Pending before the Court is a motion to dismiss filed by defendants Keith Baker
18 and Lien Enforcement, Inc. (collectively "Defendants"). (See Doc. # 5). For the reasons
19 set forth below, the Court GRANTS Defendants' motion to dismiss.

20 **BACKGROUND**

21 On May 25, 2015, Plaintiff Benjamin Scott Miner ("Plaintiff") discovered a \$1,670
22 debt reported on his credit report.¹ (Doc. # 1, pg. 2). The collection agency was listed as
23 "Lien Enforcement Inc.," and the original creditor was listed as "01RoadOne." Id. at Exh.
24 A. Thereafter, Plaintiff mailed Defendants a notice of relief, requesting that Defendants
25 validate the alleged debt pursuant to 15 U.S.C. § 1692g of the Fair Debt Collection
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27 ¹The background facts are taken from Plaintiff's complaint and are assumed true for
28 purposes of the instant motion. See Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002).

1 Practices Act. Id. Defendants did not respond. Id. at 2.

2 On December 9, 2015, Plaintiff, proceeding *pro se*, filed the operative complaint
3 alleging that Defendants violated six sections² of the Fair Debt Collection Practices Act,
4 15 U.S.C. § 1692, *et seq.* (“FDCPA”). (See Doc. # 1). Plaintiff also filed a motion to
5 proceed *in forma pauperis*, which the Court granted on December 14, 2015. (See Docs.
6 # 2, 3). On January 26, 2016, Defendants filed a motion to dismiss Plaintiff’s complaint
7 in its entirety pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure
8 to state a claim upon which relief may be granted. (See Doc. #5). No opposition was filed.

9 The Ninth Circuit has held that a district court may properly grant a motion to
10 dismiss as unopposed pursuant to a local rule where the local rule permits, but does not
11 require, the granting of a motion for failure to respond. See Ghazali v. Moran, 46 F.3d 52,
12 53 (9th Cir.1995). Civil Local Rule 7.1.f.3.c provides that “[i]f an opposing party fails to
13 file the papers in the manner required by Civil Local Rule 7.1.e.2, that failure may
14 constitute a consent to the granting of a motion or other request for ruling by the court.”
15 Although the Court may grant Defendants’ motion to dismiss as unopposed, in the
16 interests of justice, the Court addresses the merits below.

17 DISCUSSION

18 A. Legal Standard

19 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the
20 sufficiency of the complaint. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001).
21 Dismissal is warranted under Rule 12(b)(6) where the complaint lacks a cognizable legal
22 theory. Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984).
23 Alternatively, a complaint may be dismissed under Rule 12(b)(6) where it presents a
24 cognizable legal theory yet fails to plead essential facts under that theory. Id. While a
25 complaint need not provide “detailed factual allegations,” the plaintiff must plead
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27 ²Plaintiff’s complaint alleges that Defendants violated the following six sections of
28 the FDCPA: (i) 15 U.S.C. § 1692e(2)(A); (ii) 15 U.S.C. § 1692e(8); (iii) 15 U.S.C. §
1692e(10); (iv) 15 U.S.C. § 1692e(12); (v) 15 U.S.C. § 1692f(1); (vi) 15 U.S.C. §
1692g(b). (See Doc. # 1, pg. 2–6).

1 sufficient facts in the complaint that, if true, “raise a right to relief above the speculative
2 level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 545 (2007).

3 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
4 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal,
5 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). A claim is facially
6 plausible when the factual allegations permit “the court to draw the reasonable inference
7 that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. In other
8 words, “the non-conclusory ‘factual content,’ and reasonable inferences from that content,
9 must be plausibly suggestive of a claim entitling the plaintiff to relief.” Moss v. U.S. Secret
10 Service, 572 F.3d 962, 969 (9th Cir. 2009) (citing Iqbal, 556 U.S. at 678). “Determining
11 whether a complaint states a plausible claim for relief will . . . be a context-specific task
12 that requires the reviewing court to draw on its judicial experience and common sense.”
13 Iqbal, 556 U.S. at 679.

14 In reviewing a motion to dismiss under Rule 12(b)(6), the court must assume the
15 truth of all factual allegations and must construe them in the light most favorable to the
16 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337–38 (9th Cir. 1996).
17 However, legal conclusions need not be taken as true merely because they are cast in the
18 form of factual allegations. Ileto v. Glock Inc., 349 F.3d 1191, 1200 (9th Cir. 2003).
19 “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual
20 enhancement.’” Iqbal, 556 U.S. at 678 (internal citations omitted).

21 When ruling on a motion to dismiss, the Court may consider facts alleged in the
22 complaint, documents attached to the complaint, documents relied upon but not attached
23 to the complaint when authenticity is not contested, and matters of which the court takes
24 judicial notice. Lee v. City of Los Angeles, 250 F.3d 668, 688–89 (9th Cir. 2001). If a
25 court determines that a complaint fails to state a claim, the court should grant leave to
26 amend unless it determines that the pleading could not possibly be cured by the allegation
27 of other facts. Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995).

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1 B. Analysis

2 In order to state a claim under the FDCPA, a plaintiff must allege facts establishing
3 the following: (1) the plaintiff has been the object of collection activity arising from a
4 consumer debt, (2) the defendant attempting to collect the debt qualifies as a debt
5 collector under the FDCPA, and (3) the defendant has engaged in a prohibited act or has
6 failed to perform a requirement imposed by the FDCPA. Amelina v. Mfrs. & Traders
7 Trust Co., 2015 WL 7272224, at *5 (S.D. Cal. Nov. 17, 2015); see also Gomez v. Wells
8 Fargo Home Mortg., 2011 WL 5834949, at *5 (N.D. Cal. Nov. 21, 2011). Defendants
9 first contend that Plaintiff's complaint fails to allege facts establishing that the debt at
10 issue is a debt under the FDCPA. (Doc. # 5, pg. 4–6). The Court agrees.

11 The FDCPA defines a debt as “any obligation or alleged obligation of a consumer
12 to pay money arising out of a transaction in which the money, property, insurance, or
13 services which are the subject of the transaction are primarily for personal, family, or
14 household purposes” 15 U.S.C. § 1692a(5).³

15 Here, the complaint makes no allegations with respect to the nature of the debt at
16 issue. The only allegation in the complaint regarding Plaintiff's debt is that “[P]laintiff
17 obtained a copy of his credit report . . . which revealed that Lien Enforcement
18 Incorporated (‘defendant’) has placed an entry on plaintiffs [sic] credit report which
19 communicated that plaintiff allegedly had an account in default with the defendant in the
20 amount of \$1,670 through assignment from the original creditor dated 10/24/2015.” (Doc.
21 # 1, pg. 2). The complaint provides no further factual details about the debt and,
22 thereafter, refers only to the debt as “the alleged debt.” See id. at 2–3, 5–8.

23 Plaintiff's complaint provides no factual basis from which the Court can plausibly
24 concur that the debt at issue arises out of a transaction that was entered into primarily for
25 personal, family, or household purposes. Accordingly, Plaintiff has not shown that the


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27 ³This definition applies to all of Plaintiff's claims. See 15 U.S.C. § 1692a(5) (stating
28 that the above-cited definition of debt under the FDCPA applies to the term “debt” as
used in 15 U.S.C. §§ 1692–1692p); infra pg. 2, n. 2 (listing the statutes under which
Plaintiff asserted claims, all of which fall between 15 U.S.C. §§ 1692–1692p).

1 debt, which is the subject of all of Plaintiff's claims, is a debt under the FDCPA. The Court
2 thus concludes that Plaintiff has failed to state any of its FDCPA claims against
3 Defendants. Because all of Plaintiff's claims fail, the Court need not address Defendants'
4 second argument that the complaint fails to allege that Defendant Baker is a debt collector
5 under the FDCPA.

6 **CONCLUSION**

7 For the foregoing reasons, **IT IS HEREBY ORDERED** that Defendants' motion to
8 dismiss (Doc. # 5) is **GRANTED** and Plaintiff's complaint is **DISMISSED WITHOUT**
9 **PREJUDICE**.

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11 Dated: August 26, 2015

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14 **JOHN A. HOUSTON**
United States District Judge